

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Sweeney Analyst: Gloria McConnell Bill Number: AB 1630

Related Bills: _____ Telephone: 845-4336 Amended Date: 07/07/98

Attorney: Janet Ballou

Sponsor: _____

SUBJECT: Child Support Enforcement/State Agencies Report Names & SSNs of Contractors to Employment Development Department

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT COLLECTIONS. A new collection estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended 05/22/98.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO Pending.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED 03/18/98 STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would require state agencies to report the following information to Employment Development Department (EDD) for inclusion in its new employee registry (NER):

1. the name, address, social security number (SSN) of the recipient of a state loan or grant and the recipient's employer's name. Applicants of state loans and grants would be required to sign an affidavit relating to child support compliance. If the recipients, in general, are entities other than individuals, the name and social security number of the responsible managing person would be reported; and
2. the name and SSN of each contractor that contracts with the state agency. The state agency would not be required to report the information under this bill if the state agency has already provided that information about that contractor. If the contractor is a corporation or partnership, the name and social security number of the responsible managing person would be reported.

Additionally, trades or businesses, including governmental entities, that contract with the state and currently are required to file an annual information return with the Internal Revenue Service reporting personal services of an individual for which \$600 or more was paid, would be required to accelerate that reporting to EDD. The reporting would be made within the earlier of 30 days of entering into a personal service contract or first paying amounts in excess of \$600. For purposes of this analysis, individuals performing personal services (service-providers) for a trade or business for which \$600 or more is paid are termed "independent contractors."

The bill would describe the form and manner for reporting to EDD and provides the period during which the reported information would be retained by EDD.

Board Position:

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_____ N _____ OUA _____ PENDING

Department/Legislative Director Date

Geoffrey S. Way 7/30/98

SUMMARY OF AMENDMENT

These amendments:

- remove the provisions that would require each contractor or subcontractor who contracts or submits a bid to contract with the state to report the name and SSN of each employee who will perform work on the state contract; and
- add the accelerated reporting requirements for trades or businesses that contract with the state using independent contractors.

The June 29, 1998, amendments would:

- require state agencies making loans or grants to entities other than individuals to report to EDD the name and social security number of the responsible managing person of the entity and require applicants for state loans and grants to sign an affidavit relating to child support compliance;
- preclude the reporting of contract and employee information where that information in general has already been provided;
- require state agencies, contractors and subcontractors to report the required information within 20 days after the contracts are executed or loan/grants made; and
- remove the provisions relating to private debt collectors.

EFFECTIVE DATE

The operative date of the bill is generally July 1, 1999.

Specific Findings

Currently, trades or businesses that pay \$600 or more for personal services to other than an employee (non-employee compensation) are required to file an information return (1099MISC) at the end of the calendar year reporting the nonemployee compensation to the Internal Revenue Service (IRS) and/or FTB.

Under this bill, the above described trades and businesses that contract with the state would have to report information about the non-employee compensation to EDD within 20 days of executing the contract or payment of \$600 or more, whichever is earlier.

Implementation Considerations

As a contracting state agency, FTB would report to EDD, under Section 4 of this bill, the names and SSNs of each person with whom it contracts, unless that information is already provided. If the contractor is a corporation or partnership, the state agency would report the name and SSN of the corporation's or partnership's responsible managing person. FTB staff anticipates it would not be reporting information to EDD under Section 5 because FTB generally would not be contracting at the same time with another state agency and an individual to perform services on that state contract. FTB's contracts for services of an individual would be reported under Section 4 of this bill.

As to FTB's collection programs, FTB staff anticipates, and EDD staff has confirmed, that administratively EDD would distinguish the contractor information reported under Sections 4 and 5 of this bill from its employee information received under current law. This distinction is needed by FTB to determine the appropriate type of withholding to issue (wage withholding for employees or continuous order to withhold on contractual payments). This analysis presumes the information reported under this bill would be used by FTB for its child support collection program because of FTB's current practice of using EDD records for this purpose. Additionally, FTB anticipates development of a process with EDD to access the information provided under this bill for purposes of personal income tax collection.

The following implementation considerations as stated in the previous analysis still applies:

With respect to the contract-reporting requirement (under Section 4 of this bill) -- The majority of FTB's contracts are with corporations and partnerships, for which FTB would be reporting the name and SSN of the "responsible managing person." It is unclear whether all corporations and partnerships have a designated "responsible managing person." Also, it is unclear what is to be achieved with this information. Additionally, there is no indication as to the consequences if the contracting corporation's or partnership's "responsible managing person" refuses to provide the required information, especially considering that it is unclear for what purpose this information would be used.

With respect to FTB's collection program -- It is unclear the purpose for reporting under Section 3 of this bill, the names and addresses of recipients of state loans and grants. It is unclear whether the purpose is to make the loans and grants subject to withholding to satisfy the applicant's child support or tax delinquencies. If the FTB were to use the information to issue a withholding order to the state agency that reported the name of the recipient, and the withholding order were received before the loan or grant is paid to the applicant/debtor, it is unclear whether it is the intent of the author for the payments to be withheld from the applicant/debtor to pay child support or taxes rather than for the purpose for which the loan was intended (i.e., small business loan, educational financial aid). Additionally, it is unclear why the bill, under Section 3 of this bill, would require every state agency making a state loan or grant to report the name of each recipient's employer. Under the Unemployment Insurance Code (UIC), if the recipient is employed, the recipient's employer would be reporting this person as an employee. In the case of a student, the recipient may not be employed, or in the case of a small business loan, there would not be an employer.

Technical Considerations

The following are technical considerations that have been identified:

- FTB could more effectively use the contractor information reported under Section 4 of this bill to issue withholding orders if the reporting state agencies were required to report that state agency's name and address. Amendment 1 makes the suggested change.

- An exception for reporting the contractor information is provided under Section 4 of this bill if the state agency "has already provided that information about that contractor." With this provision, if a state agency contracts with both another state agency and an individual to perform services on that state contract, it would report the independent contractor under Section 5 of this bill and be excepted from the "Section-4 reporting." However, it is unclear whether the exception also is intended to apply to state agencies that participate in Department of Finance's California State Accounting Reporting System (CALSTARS) and enter their contractor's name and SSN or other identifying numbers on that system for purposes of determining whether an information return (Form 1099 MISC) must be issued to the independent contractor and the Internal Revenue Service. While these state agencies generally would have "already provided that information about the contractor" through CALSTARS, it is staff's understanding that the CALSTARS information would not be readily accessible to FTB, and other collectors, in the same manner as the EDD information. Therefore, the Section-4 reporting exception should be limited to information already provided to EDD. Amendment 2 makes the suggested change.

FISCAL IMPACT

Departmental Costs

As indicated in the analysis of the bill as amended April 14, 1998, currently, EDD charges FTB for its use of the NER for child support purposes. Assuming EDD were to charge FTB a comparable amount to use the information reported to EDD under this bill for its child support collection program, FTB's departmental costs would increase in the \$10,000 range, and that cost would be included in the child support collection program's annual budget, of which 66% is paid through federal reimbursement and 34% from the General Fund.

FTB staff anticipates that the costs associated with the following processes would be accommodated within FTB's existing budget: (1) reporting contractor information to EDD, (2) processing any withholding orders that may be received by the department as a result of the matching of data between FTB and EDD, and (3) processing payments received as a result of the withholding orders issued to the reporting state agency.

Collection Estimate

Any collections this bill may generate would depend on the extent to which child support delinquencies otherwise would not have been collected through information currently available to FTB. To the extent the FTB receives information earlier as a result of this bill, there could be additional or accelerated child support collections.

As discussed in the analysis of this bill as amended March 18, 1998, FTB estimates that the information reporting required by state agencies under Section 4 of this bill would accelerate or provide additional collections of delinquent child support on accounts referred to FTB by approximately \$500,000 annually. However, the necessary data and information are not available to determine the collection impact from information reporting required by California trades or businesses that contract with the state under Section 5 of this bill.

This analysis assumes the reported information will be captured by EDD and available to FTB in a form and manner that FTB can readily use to issue withholding orders. This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Position

Pending. At its May 28, 1998, meeting the Franchise Tax Board voted 2-0 to support the April 14, 1998, version of the bill (the Department of Finance was absent).

FTB'S SUGGESTED AMENDMENTS TO AB 1630
As Amended July 7, 1998

AMENDMENT 1

On page 5, line 25, after "agency" insert:
and the name and address of that state agency

AMENDMENT 2

On page 6, line 19, after "contractor" insert:
to Employment Development Department